MONTANA LEGISLATIVE HISTORY

Chapter 313 19 69

Bill H 8 S _____ Original bill & history ___C

H. Committee on Pub. Health, Welfare & Safety			S. Committee on Finance & Claims		
Hearing Date(s)	Jan 17	✓C	Hearing Date(s)	Feb 09	✓C
Jan 29	Jan 19	✓C			C
Jan 28	Jan 25	✓C			C
Jan 29	Jan 26	✓C			C
Date Out		C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Public Health Welfare & Safety

Feb 22

January 17, 1967

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

The Public Health, Welfare & Safety Committee met in Room 119, at 2:45 p.m., Tuesday, January 17th, 1967. All members were present with the exception of Himsl, and Patrick; Chairman Crum presided.

House Bill 13 was the first bill opened for discussion. Mr. W. J. Fouse, Administrator of the Department of Welfare, said that the purpose of the bill was to comply with the 1965 amendments to the Social Security Act, and would make it possible, in the case of aid recipients who were not capable of managing their own funds, to make payments to another interested, responsible person on the recipients' behalf without having to have a guardian appointed by the courts, and that the control would be with the case worker.

Principal sponsor of House Bill 84, Representative Ray J. Wayrynen, introduced Dr. William F. Cashmore, Executive Secretary of the State Board of Medical Examiners, who explained that HB 84 was a complete revision of the present act and applies only to doctors of medicine, and that its purpose is to upgrade the practice of medicine in the state of Montana, and had been under study for 1½ years. Mr. Russ Hegland, Executive Secretary of the Montana Medical Association, stated that his Association had studied this bill, and that it is approved by the Executive Committee of the Montana Medical Association, who support passage of the bill in its present form. Mr. M. E. Magnuson, attorney for the State Board of Medical Examiners, spoke briefly on behalf of the bill. Witnesses were excused.

Mr. Hall moved that the committee recommend that House Bill 13 be referred to the Judiciary Committee for the purpose of amending to provide additional safeguards on the expenditure of funds. Mr. Marbut made a substitute motion that the bill be reported out by the committee as "Do Pass". Substitute motion was seconded and carried.

House Bill 8 was the next bill up for discussion. Principal Sponsor, Representative Harry T. Northey, introduced Dr. Kenneth J. Lampert, Missoula City-County Health Department, who presented slides with the aid of Robert Higgins, Missoula Health Department, showing the air pollution situation in Missoula. Dr. Lampert recommended: (1) the incorporation of standards in the bill; (2) a registered sanitarian in the state should be included on any enforcement agency; and (3) that the local control option be retained.

Dr. D. A. Diettert, physician from Missoula, spoke in favor of House Bill 8, and supports the local option, and recommends that basic standards should be stated in the bill, and that there be no exceptions allowed (testimony attached).

Mr. Henry S. Pennypacker, representing the Forest Industries of the Missoula area, stated that the wood industry recognizes that a good control law is needed, and that either HB 8 or HB 30 could be made into a good law, HB 30 with little or no amendment, or HB 8 with some amendments (remarks attached).

Mr. Howard S. Gardner, Professor of Pulp and Paper Technology and also Professor of Chemical Engineering at the University of Washington, Seattle, discussed the technical aspects of air pollution control in kraft pulp and paper mills, the present level of practice in the industry, and compared the operations of Hoerner Waldorf with the present level of industry operations (statement attached).

Mr. William C. Hodge spoke on behalf of Hoerner Waldorf, and stated they support HB in its present form and HB 8 with changes indicated by Mr. Pennypacker, and that his company supports a fair law setting up a program that is well financed and properly administered by technically qualified people (statement attached).

Dr. Wayne P. Van Meter, Associate Professor of Chemistry at the University of Montana, addressed the committee in regard to the inorganic chemistry of fluorine and its compounds as related to air pollution, and recommended that legislation incorporate specific standards of airborne contaminant concentrations, and there should be on the policy-making body at least one person with a bachelor's degree or higher in some biological or physical science.

January 17, 1967
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

Dr. C. C. Gordon, Associate Professor of Botany at the University of Montana and Chairman of the Western Montana Group, Scientists Institute for Public Information, Missoula, showed slides and discussed the damage to foliage of conifer-bearing trees resulting from such airborne contaminants as sulphur dioxide and hydrogen flouride. He favored including an eighth man on the commission who should be a biologist, possibly a plant ecologist. He read from a letter from Mr. Gardner Cromwell, an attorney in Missoula, giving his opinions on HB 8 and HB 30 (attached).

Mr. Sam Reynolds from the editorial staff of the Missoulian spoke in favor of passage of HB 8 (remarks attached).

Chairman Crum announced that testimony would be given at the committee meeting on Thursday by proponents of House Bill 30, and that on the following Tuesday, representatives from other businesses and industries would testify concerning air pollution bills.

The meeting adjourned at 5:10 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

TELEPHONE 549-2374

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

COUNTY COURTHOUSE ANNEX, ROOM 301

MISSOULA, MONTANA 59801

Prepared Statement for the House Committee on Public Health, Safety, and Welfare

The Missoula City-County Health Department feels House Bill 8 should be considered as the bill to do the job for air pollution control in Montana.

We do, however, have some changes to recommend.

1. Standards are necessary, we feel, incorporated into the bill. As the bill now reads, constitutionality of standards might be questioned if set by the commission.

We work daily with many pieces of existing health laws, some of which contain no standards and/or ambiguous authority. Because of this, we often have to rely on bluff to accomplish our aims. Standards are, therefore, strongly urged to be a part of House Bill 8.

2. It is the Health Department's feeling that a registered sanitarian become a member of any enforcement group. This sanitarian should be knowledgeable in air pollution technology. As an environmentalist, the sanitarian in Montana is perhaps better qualified than some other professional people to assess the total picture of the environment as related to the impact on man.

TELEPHONE 549 2374

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

COUNTY COURTHOUSE ANNEX, ROOM 301

MISSOULA, MONTANA 59801

Not in the line of changes, but emphasizing Section 16 of House Bill 8, we would ask that local option be retained as a part of the bill. We in public health work are hamstrung now in water pollution control where no local option exists. Instead, we must go through "the back door" to solve water pollution problems. In an area such as Missoula where we have an acute air pollution problem, and where the Health Department has done so much in air pollution study, local option is a must.

Your consideration of this statement is appreciated.

Respectfully submitted,

Kenneth J. Lampert

Kenneth J. Lamert, M.D., M.P.H.
Health Officer
Missoula City-County Health Department

THE WESTERN MONTANA CLINIC
OWEN AND WEST BROADWAY
BOX 1307
MISSOULA, MONTANA

TELEPHONE 549-6181

January 18, 1967

TESTIMONY GIVEN TO THE HOUSE PUBLIC HEALTH COMMITTEE ON JANUARY 17, 1967, BY G. A. DIETTERT, M. D.

Mr. Chairman, members of the Committee, it is a privilege to speak to you today representing the physicians of Missoula.

Why do physicians have a concern about air pollution more than the average citizen? Is it because when it is gloomy and smoky and dirty and foggy, people feel depressed? Well, that's a kind of disease called urban depression and we are concerned about it. But we are also concerned because of the mounting evidence that air pollution is a factor in causing other diseases. There is no longer any doubt that air pollution is a medical problem involving millions of persons producing a variety of subtle--and sometimes not so subtle--effects with a tendency to worsen with increasing urbanization.

Air pollution is one factor in producing the alarming increase in chronic bronchitis, emphysema and cancer of the lung. It has been clearly shown to produce acute symptoms and aggravation of disease in patients with chronic respiratory disease. I would be happy to discuss this evidence with you later in the question and answer session.

In Montana statistics up to 1963 show a three-fold increase in chronic bronchitis in the past ten years and a two-fold increase in cancer of the lung. Anaconda, Missoula and Butte rank the highest in morbidity in these respiratory diseases, but the most startling point is that the highest incidence of asthma in the state is in Libby, not a particularly metropolitan area but a community with one of the worst air pollution problems in the state.

Some of the levels of pollution we worry about are: First, particulates. Particulates are simply dirt that is suspended in the air. In Missoula 168 1/2 tons of dirt fall per day. A level of 150 mcg. per cubic meter is the equivalent of breathing in a pound of dirt into the respiratory system in a nine-month period. The American Medical Association's Department of Environmental Health feels that there is a problem when the level reaches 150. The U. S. Public Health Service did studies throughout the country and found that in non-urban areas the level of particulate was 27 and in urban area the average was 104. Second, we are concerned about organics. Missoula's level is 17. The national average for non-urban areas is 1.5 and for urban areas 7.6. The American Medical Association feels that a level of 10 is an indication of a problem, and Doctor Lampert's goal for Missoula of 20 is probably somewhat high. One of the organic substances which is present in Missoula is Benzoapyrine, a known cancer-producing substance. If one wishes to produce cancer of the skin of a mouse, one paints it on the skin; if you want to produce cancer of the lung, you spray it into the lungs. The level of Benzoapyrine in Missoula is the equivalent of that which one will get by smoking three packages of cigarettes per day, and everyone knows that cigarettes cause cancer. Third, we are worried about the level of sulfate in Missoula's air. Our level is 8; the national average for urban industrial areas is 9.6. The American Medical Association feels when one reaches a level of 7, there is a pollution problem.

I support House Bill 8 because it has more of the elements of a good air pollution control bill than does House Bill 30. I particularly support the local option portion which will allow those communities who want to do more than the minimum the opportunity to do so, whatever their reasons.

I would feel, however, that whatever bill is passed should state basic required standards which should be met by all communities in the state. Further, it should not exempt anything. It should not exempt automobiles just because you and I own one. It should not exempt backyard barbecues, which should not be a pollution problem anyway. Finally, any bill that is passed should make enforcement in the public's interest and welfare. As I read both bills, it seems to me that the enforcement portions of the act are slanted toward the pollutor rather than being in favor of the public's welfare and this, after all, is why we want to have a bill.

Thank you.

G. A. Diettert, M. D.

REMARKS OF HENRY S. PENNYPACKER, MISSOULA
BEFORE THE HOUSE COMMITTEE ON HEALTH, SAFETY & WELFARE
HELENA, JANUARY 17, 1967

Introduction

My name is Henry S. Pennypacker. I am a vice president of Intermountain Lumber Company of Missoula. I here represent the Forest Industries of the Missoula area, which employ in all their phases about 4,000 people or one half of the forestry industry workers in the State.

We in the wood industry make no attempt to deny the existence of an air-pollution problem in parts of Montana--particularly in the mountain valleys of the West, where temperature inversions frequently prevent contaminants from being dispersed and blown away.

We recognize that a good control law is needed. We have studied both HB 30 and H B 8 and feel that either bill can be made into a good control law. H B 30 with little or no amendment and H B 8 with amendment.

I think what we all hope to see is an air pollution control act that will be effective, equitable, and above all workable. H B 8 can be such a law, I think, but only if it is amended in certain respects. The changes we think should be made are as follows:

Commission 1.

The seven man Commission set up in Section 4 of the bill should be eliminated and its place taken by the 13-man council named in section 5 of the bill. This is because the 7-man commission is composed of political

appointees, and they have the power to appoint deputies for themselves. This would not be conducive to getting the best and most knowledgeable people on the Commission. If you take the 13-man council, rename it the Commission and put it in Section 4, you would get a far more knowledgeable and effective Commission than as the bill is now written.

At the same time we recommend making the Executive Officer of the Board of Health and the Director of the Commission and putting the Secretary of the Board of Health on the Commission in place of "urban planner."

Local Control 2.

We believe the idea of local control districts as described in Section 16 is unworkable, for the reason that local districts in Montana would be unable to properly finance themselves, particularly in the matter of paying the kind of salaries needed to get the necessary technical expertise. We would like to see Section 16 and Paragraph 8 of Section 11 of H B 8 deleted.

Minimum Fine 3.

We believe that establishing a minimum fine of $750 a day for an air-pollution violation is unusual and undesirable. We feel that the minimum fine should be discretionary.

Exemptions 4.

We do not believe there should be any exemptions to the bill. Exempting

automobiles, backyard barbecues,and fireplaces and home heating plants is a step in the wrong direction. The California experience has shown that these things must be controlled--in fact, today about 90% of the problem in Los Angeles comes from automobile exhausts, so why should we in Montana fly in the face of experience? We believe these exemptions will have to go eventually, so why not now?

Variances 5.

Under H B 8, if an industry is denied a variance by the Commission, there is no appeal. However, if an individual objects to the issuance of a variance to somebody else, he can apply to the courts for judicial review. This is obviously unfair to somebody.

De Novo 6. We feel that H B 8 is lacking in that it does not provide for a trial de novo when an appeal is made from a ruling made by the commission. In other words, while H B 8 provides for jucicial review on appeal, it does not provide for a court trial where new evidence may be adduced and irrelevant or inadmissable testimony excluded.

We know, however, that proponents of this bill feel that the procedure for appeal is adequate as written, and as industrialists and laymen we are willing to admit that this is a question perhaps better left for the lawyers to decide, so we will not belabor it here.

Conclusion

In conclusion, I would like to repeat that the Missoula Forest Industries

believe in a good workable air pollution control act and would be happy with either H B 30, as is, or with H B 8, with minor changes as indicated.

Thank you.

HENRY S. PENNYPACKER

STATEMENT GIVEN BEFORE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE OF THE HOUSE OF REPRESENTATIVES

Ladies and Gentlemen:

My name is Howard S. Gardner. I am Professor of Pulp and Paper Technology and also Professor of Chemical Engineering at the University of Washington, Seattle, Washington. I am a licensed professional engineer in the States of New York and California, a member of the Air Pollution Control Association, the American Institute of Chemical Engineers, the American Chemical Society, and the Technical Association of the Pulp and Paper Industry. For fifteen years, from 1947 through 1961, I was Director of Research and Development for Fibreboard Corporation, a major west coast producer of paperboard, shipping containers, folding cartons, and building materials. In this capacity I was technically responsible for Fibreboard's program in air pollution control, and my interest and activities in this field have extended over twenty years.

I come before you today at the request of Hoerner Waldorf Corporation to discuss the technical aspects of air pollution control in kraft pulp and paper mills, the present level of practice in the industry, and to compare the operations of Hoerner Waldorf with the present level of industry operations.

There are three types of discharge to the atmosphere from a kraft mill, and each requires a different type of control. Chemical dust and ash are discharged from furnaces used to burn spent pulping liquors, from lime kilns to regenerate lime used to prepare pulping liquor, and from modern steam-generating furnaces used to burn wood waste. These dusts as produced in the combustion process vary in size from wood ashes as large as corn meal, or

larger, to chemical dust composed largely of particles so fine that a row of one hundred particles would have a length that is less than the thickness of a human hair. Collection of large particles in cyclone separators is relatively easy, but collection of the fine dust requires specially developed scrubbers which can effectively remove all but a small fraction of the smallest dust. These dusts are not injurious to health, and the present level of best industry practice in dust removal is regarded as generally satisfactory. The Hoerner Waldorf equipment for dust removal from lime kilns and wood waste burners is modern, similar to that now going into new installations. Special mention should be made of the two-stage dust scrubber recently installed on the largest chemical recovery furnace. This is the first installation of its kind in the world, and it is expected to reduce to negligible levels the amount of dust discharged to the atmosphere.

The second type of objectionable discharge from the mill is the characteristic odor resulting from the chemical nature of the kraft pulping process. The kraft process -- "kraft" is the German and Swedish word for "strong" -- gives the strongest pulp that present technology can economically produce from a given wood. The present major expansion in pulp production, taking place in many locations around the world, is almost entirely in new and enlarged kraft pulp mills. The odorous compounds are released in relatively small amounts, on a pounds-per-day basis. Unfortunately, they have persistent characteristics that are recognizable by smelling at very high levels of dilution, less than one part in a billion parts of air. One way of visualizing a diultion of one part per billion is to recognize that this corresponds to one second

in a time period of 31 years. The technical problems of completely eliminating kraft mill odors, at this level of complexity, have not been solved, but real progress has been made. The introduction of continuous pulping, as compared to batch digesters, has made it possible to handle a continuous small stream of gases rather than the periodic discharge of large amounts of gas. Collection and burning of odorous gases has significantly reduced the total odor effluent. Oxidation of the spent pulping liquor to reduce the amount of volatile odors is a case in which Hoerner Waldorf pioneered the first installation outside the deep south where the technique was initially demonstrated. Control of combustion conditions within the chemical recovery furnace is important to maintaining a low odor level, and the furnaces at Missoula are equipped with modern instrumentation to permit such control. In all of these respects, the Hoerner Waldorf mill installations represent the most modern industry practice in reducing the discharge of odor. Your attention should again be called to the recently completed two-stage scrubber on #3 chemical recovery furnace. When the planned testing and research program is finished, it is expected that the use of a special scrubbing solution in the second stage will result in a further reduction in the concentration of odorous gases from the furnace. The entire pulping industry awaits these pioneering results with great interest.

Before leaving the subject of kraft mill odor, I should point out that the kraft pulping process was developed in the 1880's, the first mill in the United States was installed about 1900, and there has been a long experience of many people, and many communities with the odor problem. Everyone recognizes the undesirable nature

of the odor, but it should not be regarded as a public health problem. To the present time, there is no known evidence to my knowledge of illness or injury caused by kraft mill odors.

The third type of discharge from the mill is water vapor, from combustion processes and from the evaporation of water from the pulp dryers and paper machines. When the surrounding air is cool enough to condense the water vapor, the white vapor clouds are clearly visible over the mill. Again, these constitute no hazard to health. In most circumstances, their evidence of activity is regarded as a sign of economic well-being in the community. Present industry practice, and present power plant practice as well, does not attempt to deal with this problem. However, Hoerner Waldorf is also pioneering in this field, and has installed a unique unit which uses waste steam from the pulping process to provide heat for an evaporator which concentrates spent pulping liquor. At other mills, the waste steam condensed by this evaporator would be discharged to the atmosphere. While the principal feature of this waste-heat-evaporator is heat recovery, it reduces the total amount of water vapor discharged to the surrounding air. However, the quantity of water vapor discharged by the Hoerner Waldorf mill is so small, in comparison to the total amount of water present in a typical fog in the Missoula valley, that I do not believe that the mill effluent is significantly influencing the incidence or duration of fogs in the city of Missoula.

In conclusion, I would like to point out that the problems of kraft mill air pollution are varied, complex, difficult and complete solutions are beyond the scope of existing technology. At the same time, the pulp and paper industry is conducting a

vogorous research program in many places, and is now spending and preparing to spend many millions of dollars to apply the best knowledge that we now have. This is a responsible industry, performing a vital function in supplying part of the goods and services essential to our modern way of life. I am confident that it will continue its efforts to be a good neighbor in its many locations across the land.

Wm C. Hedges

STATEMENT GIVEN BEFORE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE OF THE HOUSE OF REPRESENTATIVES

Mr. Chairman and Gentlemen of the Committee:

There is no need to tell you people that mountain valleys have air pollution problems. The relatively small volume of valley air that is trapped during times of temperature inversion has a limited ability to dilute airborne by-products of our modern society. These valleys always have had and no doubt always will have this trouble to some degree. The products of our activities referred to as air contaminants are many and varied and we all contribute to the total. Industry must share part of the responsibility and in a wood products center such as Missoula this share is considerable.

As our population grows and our economy expands we are bound to have problems, and air pollution is one of them. But do we crawl in a hole and accept the position that nothing can be done or, worse yet, take the attitude that chopping off the foot will cure the ache in the toe. No, we analyze the problem and devote our energies toward a solution. In this regard Hoerner Waldorf must assume an active role in that part which involves our industry. Governmental bodies can be of assistance, institutions such as the University of Montana and Montana State University can help, industrial research centers provide needed guidance, but in the end we must solve our own problems.

The answer to these problems and many others, especially in reference to how our young people will find a livelihood in pleasant surroundings, lies not in shutting down or curtailing industry, but rather in expanding job opportunities and tax bases. If a positive approach is taken and if we in concert attack our problems, we will all benefit.

Quite logically then you may ask, "How have you analyzed your air pollution problem? What have you done?" The problem as we see it has three main components:

(1) A large quantity of wood residue generated as a by-product of our wood manufacturing industry;

(2) Until some smart fellow figures another way to do it, the Kraft pulping industry is stuck with a characteristic odor; and

(3) We have to learn how to better capture extremely finely divided particles that escape from our mill stacks.

Now, going back to the first part of this outline of the problem, what have we done? The role of Hoerner Waldorf in the forest industry complex is in the area of utilization of waste material from our sawmill and plywood industry and in general is little understood by many people. From the standpoint of the maximum use of our wood resource the advent of the pulp mill in Western Montana provided a market for material that was being burned entirely in teepee burners. The advent of a market for chips upped the utilization of a log from approximately 50% to about 75%. In order to further increase this utilization and to help reduce teepe burning, Hoerner Waldorf installed a hog fuel boiler, which enabled some mills to push their utilization up to around the 90% level. Now with the advent of sawdust cooking it is expected that the utilization factor for most of the mills in the Missoula area will be over 95%, again further reducing teepee burning. This does not mean we can take all the waste all the time, but what it does mean is that most of the time the local mills will have an outlet for virtually all the wood that is brought to town, including bark, sawdust and shavings. In addition to Missoula, more than 20 other communities in Montana and Idaho are benefiting in that wood scraps formerly burned are now

shipped to Missoula for processing. The point I want to make here is that we have a large plant employing 400 people directly and contributing $20 MM dollars a year to our economy, existing on scraps, and not reducing our forest resource by one stick -- WHAT A CONSERVATION STORY.

In the field of odor control Hoerner Waldorf has vigorously pursued every hopeful possibility until at the present this plant is in the top 5 or 10 mills in the country.

The third major segment of theproblem is the capture of fine particulate. Just going into operation is the first production-size brine scrubber in the world. In the second and third categories of our problem definition I merely summarized, but let me say that we have done many things to curb both odor and particulate discharge -- and I will add -- without a law or anyone forcing us. I bring this up because there are few people in business today that do not recognize their community responsibilities.

I was asked to comment on legislation and how it may affect our operation. Hoerner Waldorf has never opposed a reasonable bill and supports an approach that will lead to the orderly development of our community and state. Many people have the mistaken idea that passage of an air pollution control bill will end air pollution and I'm sure our hard-working representatives will receive nasty phone calls two weeks after they pass a bill when the citizens find we still have it with us. The point is that a good law is but one tool out of a kit. Hoerner Waldorf supports House Bill 30 in its present form. Hoerner Waldorf supports House Bill 8 with changes indicated by Mr. Pennypacker. Hoerner Waldorf supports a fair law setting up a program that is well financed and properly administered by technically qualified people.

William C. Halg

1/17/67

UNIVERSITY OF MONTANA
MISSOULA 59801 PHONE 243-0211

January 20, 1967

Department of Chemistry

Representative Forrest H. Crum
Chairman, Public Health Committee
House of Representatives
The Capitol
Helena, Montana

Dear Mr. Crum:

I am enclosing fifteen (15) copies of the text of my testimony before your Committee at its meeting last Tuesday, January 17. I have set down as accurately as possible the wording of a few short passages that were given ad lib. If your secretary recorded a verbatim draft, it may be more accurate in detail, but should be identical in meaning and intent.

Thank you for the opportunity to present my views.

Sincerely yours,

Wayne P. Van Meter

Wayne P. Van Meter
Associate Professor

WPV/kg

Encl.

Testimony Concerning House Bill 8.

House Public Health Committee

January 17, 1967

Dr. Wayne P. Van Meter
Associate Professor of Chemistry
University of Montana

Mr. Chairman:

Members of the Committee:

I have lived in Missoula for 7½ years. For the past 12 years my special interest has centered on the inorganic chemistry of fluorine and its compounds.

I feel I have time here to address myself to one aspect only of just one of the several localities of obvious air pollution in Montana. I will use it as a way of emphasizing one of the specific comments I will make in a few minutes about the bill itself.

The damage to living organisms that is occurring in the Garrison, Montana area is due mainly to fluorine in the form of hydrofluoric acid, or hydrogen fluoride.

PLACARD:

HYDROGEN FLUORIDE

HF

FLUOROSILICIC ACID

H_2SiF_6

It has been alleged on a number of occasions that the fluorine being discharged by the phosphate plant at Garrison is not HF, but fluorosilicic acid, H_2SiF_6. These are clearly two different substances. Misconceptions about the responsibility for damage could exist unless some details of the properties of these substances are known.

My purpose here is to state known chemical facts about the behavior of these substances. I use my position as an expert to interpret to you what chemical science recognizes as fact, <u>not</u> to give my own opinions.

Fluorosilicic acid is not a stable compound that can be made in a pure state, put in a bottle, and tested or used. No chemist has ever done this. The substance is well known, and used industrially, in water solution. However, as soon as an attempt is made to drive off the water, or to separate the dissolved acid from the water, it decomposes according to this equation:

PLACARD:

EVAPORATION DECOMPOSES

FLUOROSILICIC ACID

$$H_2SiF_6 \longrightarrow SiF_4 + 2\ HF$$

The gases developed during the roasting of phosphate ores (essentially the mineral fluor-apatite) consist mainly of silicon tetrafluoride, hydrogen fluoride, carbon dioxide and water vapor.

After leaving the kiln and stack the silicon tetrafluoride is subject to further changes.

Upon mixing with the atmosphere, the water vapor there will bring about a reaction (we call it a hydrolysis) generating silicon dioxide and hydrogen fluoride.

PLACARD:

HYDROLYSIS OF

SILICON TETRAFLUORIDE

$$SiF_4 + 2\ H_2O \longrightarrow SiO_2 + 4\ HF$$

So we see, that the fluorine that escapes from the process, whether it comes from the scrubber and stack, or from the downstream end of the kiln (and this is the case under some weather conditions) is presented to the surroundings in the form of hydrogen fluoride, a very toxic substance.

Now, let us go back to the real problem. Why should the gases escape? It is a matter of technical, industrial fact that these materials can be prevented from entering the atmosphere in any harmful amount. The equipment is known; standard chemical engineering practice can accomplish the job.

It is true that the odorous materials mentioned by Dr. Gardner a moment ago have not been shown to cause damage at the low concentrations he mentioned, in the order of one part per billion parts of air. But these same pollutants and others we are concerned about often occur at concentrations thousands of times greater than this; it is possible to avoid these levels of contamination.

The state needs legislation that will require that the job be done, in each specific case of need, effectively and promptly. I would like to comment on two factors that I feel are important to this objective.

First, the legislation should itself contain specific standards of airborne contaminant concentrations. This should not be left to the risk of indefinite delay by a commission or council established by the legislation.

Second, there should be, on the policy-making body (commission), at least one person who has had scientific training. By this, I mean at least a bachelor level degree, and preferably higher, in some biological or physical science. This person could then confer understandingly with scientists around the state and interpret to the rest of the commission the meanings of technical factors bearing on individual pollution sources and geographical areas of the state.

Thank you.

C. C. GORDON

C. C. Gordon, Associate Professor of Botany at the University of Montana and Chairman of the Western Montana Scientists' Committee for Public Information.

This organization is one of 22 information committees affiliated with the national organization, the Scientists' Institute for Public Information, which was founded in New York after a two-day conference of scientists on February 17, 1963. At that time, recognizing that the progress of science now provides society with powers which can be used for either the destruction or enrichment of life and that every person today participates in momentous political decisions, it was felt imperative that citizens understand a growing body of scientific information in order to make informed and responsible judgements.

To that end, the Scientists' Institute for Public Information was formed with Dr. Edward L. Tatum, Nobel Prize Winner and Professor at Rockefeller Institute, as Chairman and other internationally-famous scientists such as Rene Dubos, Theodosius Dobzhansky and Margaret Mead as directors. Its members are pledged to provide the public with scientific information in understandable form, uncolored by political or moral judgements, objectively covering all sides of controversial questions and making such information freely available to all. In addition, they undertake continuing studies of developing problems in order to anticipate the future need for scientific information.

The function and purpose of the Western Montana Scientists' Committee for Public Information coincide with those of S.I.P.I. At this time its members are concerned with the dissemination of factual, up-to-date information on all types of environmental contamination, particularly those which affect the physical and economic health of the State of Montana.

Missoula, Montana 59801
440 East Beckwith Avenue
January 16, 1967

Dr. Clarence C. Gordon, Chairman
Western Montana Group
Scientists Institute for Public Information
Missoula, Montana 59801

Dear Dr. Gordon:

You have requested my opinion of H.B. 30, the so-called Air Conservation Act, and H.B. 8, entitled the Air Pollution Control Act. In the interests of brevity, I have not recorded here all of my professional criticisms of both measures. I have confined my opinion to three principal areas -- standards, enforcement, and judicial review. These three would be regarded generally, I think, as essential.

STANDARDS. Neither proposal sets either emission or ambient air quality standards. This is, in my opinion, a grave deficiency — from two equally important points of view. First, I think that both emission and ambient air quality standards ought to be set by the legislature as a matter of policy. It would be a relatively simple matter to refer to the Ringelmann Chart and establish a measure of the quantity of particulate matter in each cubic meter of air. If the setting of standards is left to a Council (H.B. 30) or a Commission (H.B. 8), there may be none set for years. The neighboring state of Idaho, which has had an air pollution control act since 1959, is a good example.

Second, it is my opinion that the legislature should set standards because there may be a constitutional issue involved. Both proposals grant to an administrative agency authority to set standards for "air pollution." I am not prepared to state flatly that this delegation of authority is unconstitutional, but I believe that the question exists. My opinion is strengthened by two additional factors: (1) I know of no court decision upholding such a grant in air pollution control legislation. (2) On the other hand, the Ringelmann Chart has been held constitutional by the California courts. It is my opinion that it is unwise to invite an action questioning the constitutionality of legislation by omitting to provide a standard which has been upheld.

It is significant, in my view, that the recent Colorado Act specifies both emission and ambient air quality standards. The same kinds of standards are provided in a model local air pollution control ordinance issued in July, 1966, by the Metropolitan Washington Council of Governments. The Chicago city ordinance and the long-standing and highly effective California Act both provide emission standards. The United States Public Health Service approves the use of the Ringelmann Chart , and has very recently urged as a standard the use of No. 1 (the least black) rather than No. 2 which appears in the Chicago and Los Angeles regulations.

ENFORCEMENT. There are at least three enforcement elements available: criminal penalty (fine, imprisonment), civil penalty (injunction), and permits. Furthermore, the ease or difficulty in securing variances from the provisions of the act can aid or defeat enforcement. Both H.B. 30 and H.B. 8 are deficient. H.B. 30 provides a mere slap on the wrist -- punishment as a misdemeanor ($0-$500) for a violation. It does not provide that each day shall be a separate violation. The United States Public Health Service takes the position that "in our judgment violations should carry substantial penalties in order to discourage any violator from incurring the penalty as a cost of doing business which involves less expense than incorporating control measures."

The permit provisions are not mandatory and they operate only in the future, not on existing installations. Finally, the variance provisions are designed to encourage the granting of exemptions, and they allow the renewal of variances from year to year without a hearing.

H.B. 8 provides a much stiffer criminal penalty -- a fine of at least $750 for each day. However, its permit provision is subject to the same criticism as is H.B. 30. The United Public Health Service has refused to endorse the model act from which H.B. 8's permit provision was drawn. One of the reasons is that section 8 "constitutes an effort to provide authority comparable to that afforded by a permit system without establishing a permit requirement as such."

The real significance of a permit requirement is revealed in this statement by Harold W. Kennedy, Counsel for the Los Angeles County Air Pollution Control District: "It does not require a great deal of imagination to see that the enforcement of law under a permit system is far more effective than occasional visits by a violator to the criminal courts, or protracted litigation in a civil action." Mr. Kennedy has been actively associated with air pollution control for twenty years, and probably knows more about it than any other lawyer in the United States.

REVIEW. There must be observed the requirements of due process and the public welfare necessity for avoiding unreasonable delay. H.B. 30 incorporates a judicial review provision from the Water Pollution Control Act which orginated in the Workmens Compensation Act. It provides for trial de novo, which is a cause of delay at the same time as it provides for a determination by the court more in keeping with a record appeal. This particular provision has been criticized by the United States Public Health Service on the ground that it removes the determination from an expert administrative agency and places it in an inexpert court. In addition, the USPHS has urged that, if the court is being asked to establish policy, the provision may be unconstitutional because the legislature must set policy. The final step in the review process allows the Board of Health to extend a "final" compliance order "for a reasonable period of time." In my opinion, these long delays go far beyond any due process requirements.

H.B. 8 contains in section 14 some excellent provisions on judicial review taken from H.B. 56 of the 39th legislative assembly. It provides for a review "on the record," and allows the court to determine whether the order is supported by proper evidence. In my opinion, this meets the requirements of due process and it protects against unreasonable delays.

I must include, in addition, my opinion that section 21 of H.B. 8 (tax incentives) is subject to constitutional challenge. My research indicates that ten states have some kind of tax incentive or forgiveness legislation. Five of them passed such measures within the past two years. None which I found limits such favor to "any person, firm, or corporation who operates a business" as does section 21. On the other hand, the 1966 New York act relates to the "owner of the facility" (control), and the 1966 New Jersey legislation refers to "any equipment, facility or device." I think that allowing tax incentives only to one "who operates a business" raises a constitutional question of discriminatory classification.

Finally, I include my opinion of the fundamental necessity for passing good legislation initially. Since 1957 (amended in 1961), the state of Washington has had an air pollution control act. This session, the Washington legislature must consider 65 amendments to that act, a bill covering 51 pages. It is my view that the legislative assembly of Montana can learn from the already wide experience of other states.

Very truly yours,

Gardner Cromwell

Gardner Cromwell
Attorney and Counselor-at-law

Sam Reynolds. Remarks made January 17, 1967 before House Committee on Public Health, Welfare, and Safety.

The remarkable thing about today's hearing is that it reflects an unaccustomed unity. Some Missoula people want a stronger bill than HB 8, some weaker.

But they are at least talking in general favor of the same bill, rather than splitting entirely behind two separate bills. Such unity, if unity it can be called, is in itself heartening.

Unity is reached on some fundamentals. An important one is that an air pollution control law must be adequately financed so that competent, highly skilled people can be hired. Neither the public interest nor the private corporate interest is served by hiring unqualified hacks who cannot understand when a specific air pollution problem can be reasonably surmounted and when it cannot.

Unity seems to be reached too behind the idea that HB 8 is sound basic legislation, based on a model bill which was carefully drawn up by persons qualified in the field of air pollution control law. Missoula differs greatly over this and that detail. But Missoula is not interested in seeing a law enacted which will risk extensive and prolonged court testing and legislative amending before it suppresses any pollution. If the sound basic law embodied in HB 8 is enacted, we feel that the details can be adjusted in time. Adjustment is far easier to face than major overhauling or beginning all over again.

The model law on which HB 8 is based was drafted cooperatively by the Council of State Governments, to which Montana paid $7,200 last biennium to get qualified service on state problems, and by the U.S. Public Health Service. Actually, the Public Health Service would prefer a stronger draft than the final model bill.

[Reynolds]

HB 30, on the other hand, is based mostly on Montana's water pollution law and on Illinois law. It was put together by persons unversed in air pollution control law. It is based on a law aimed at another type of pollution, a law which is untested, in whole and in most detail, in the courts.

It also draws on Illinois air pollution law. Yesterday I called the Illinois Air Pollution Control Board and spoke with John Moore, sanitary engineer for the Illinois State Department of Public Health and a member of the Air Pollution Control Board's technical staff.

He said the Illinois law took effect two years ago last August. So far it has been used, with good results, against open burning. Hearings are planned soon to start developing standards on dust, smoke emissions, and incinerators. That's rather a lengthy delay from the time a law is enacted to start moving against the problem.

Gov. Otto Kerner has been asked by the Air Pollution Control Board to back legislation which would:

1. Increase the penalties from $250 to $500 a day. Some companies would rather pay the fine than suppress air pollution, Moore said.

2. Allow for injunctive relief. Currently injunctions can be secured only against parties who are not being subject to judicial review. In short, if you can keep the case in the courts, you're safe from an injunction to stop polluting.

3. Remove the requirement that at least three control board members must be present at hearings. Moore said the board seeks to have only one board member and a technical secretary present at hearings, because hearings are beginning to backlog. I think both HB 8 and HB30 could follow that advice. To require hearings and then permit them to backlog would cause terrible delay.

4. Give the technical secretary power to order emergency cessation of emissions where pollution is clearly an immediate hazard.

5. Permit local district control on the part of two or more counties.

Moore pointed out that the board has exempted the city of Chicago entirely from the state law. Chicago is the only such exemption right now. It operates under local law, which is quite effective and which borrowed quite a bit from Los Angeles law. Thus xx exemption from state law permits a species of local control.

Mr. Moore is sending me a statement of these recommendations, and if the chairman wishes I'll be glad to forward them along when they arrive.

It is interesting that Illinois law, believed generally to be weak, is requiring some rather fundamental amending and that all the amendments point to stronger controls.

Missoula, united behind HB 8 in principle, differs over details. Some of those details are:

STANDARDS. This question must be faced at some point, either in the law or by the commission. Standards are the key to effective pollution control. I cannot grow as excited as some over the question of whether they should be in the law or drafted by the commission. I would prefer that a Ringelmann standard were contained in the law, but would lose no rest if it were not.

But Ringelmann and other standards must be faced by the xx commission and must be enacted then if not by the legislature. To refrain from putting them into law does not avoid them, even in part. Ringelmann is on its way, and so are other standards. They have to be, or the law will mean nothing.

PENALTIES. HB 30 provides penalties of up to $500, which would mean nothing to a large operator, jail for up to six months, and nobody has ever gone to jail for x polluting the air and nobody ever will, and injunction to shut the violator down. On the one hand you have almost nothing. On the other the ultimate punishment.

HB 8 provides for a fine of between $750 and $1,000 a day. I would remove the $750 minimum and keep the $1,000 maximum to give justice the latitude it needs to be either merciful or firm, whichever justice requires. The Council of State Governments bill provides for fines of up to $1,000 a day.

TRIAL DE NOVO. The Council of State Governments bill provides for review, on the hearing record only, of commission decisions under the state administrative procedure act. Montana has no such act, so HB 8 provides for court review based solely on the hearing record. If new evidence were unearthed, HB 8 provides that a court could order further hearings before the commission. This could permit introduction of new material into the record, the record the court would ultimately review. I prefer this to trial de novo, but have the general impression I prefer a losing cause. The U.S. Department of Health, Education, and Welfare, incidentally, strongly criticizes trial de novo as an altogether unnecessary protraction of proceedings.

LOCAL CONTROL. If it were set up under competent local personnel, there would be little objection. There is some doubt that that is possible in a state this size. If local control is not allowed, provision for local differences must be made so the commission can enforce stricter standards in areas where air pollution is very severe.

EXCEPTIONS. There should be no exceptions, such as for motor vehicles or outdoor grills.

VARIANCES. Variances, called exemptions and partial exemptions in HB 8, should be restricted in number and duration and be so set up that they serve as a spur to meet rather than as an excuse to avoid compliance with standards. I have the impression HB 8 would do the job, though its section on variances does not strike me as being as firm as the similar provision in the Council of State Governments bill.

PERMITS. Permits should be required for all polluting sources, existing as well as new installations. HB 8 would seem to cover only new installations.

There it is. Many of these details are very important, and it is over details that the struggle is joined.

It is too bad that differences over them tend to obscure the overriding issue, which is that Montana needs a sound legal framework which will bring, hopefully soon, effective air pollution control. HB 8 provides that framework.

I'd like to emphasize strongly that even if HB 8 should be weakened in many details, it remains sound basic legislation, worthy of support and of passage.

Thank you.

January 19, 1967

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

The Public Health, Welfare & Safety Committee met in Room 119 at 4:10 p.m., Thursday, January 19, 1967, with Chairman Crum presiding. All committee members were present with the exception of Cox and Hall (Cox excused).

Various members of the Montana Air Pollution Control Legislative Study Committee presented information concerning HB 30 and HB 8.

Dr. John S. Anderson, Executive Officer of the State Board of Health, gave the background of the work of the Air Pollution Control Legislative Study Committee, and then introduced the other speakers on the panel.

Mr. Ben Wake, Industrial Hygiene Engineer of the State Board of Health, said that the technical procedures of air pollution control are less difficult than the determining of policy statements. The preliminary estimate of costs to administer HB 30 totals $93,930 (comments attached).

Mr. Richard Dightman of the Weather Bureau at the Helena airport discussed various aspects of the atmosphere relating to air pollution and compared the wind movement, days of temperature inversion and air mixing depth of Missoula and Great Falls. Since there is much diversity in these elements, he felt that it would not be practical to set uniform standards for the entire state.

Mr. Robert Sykes, attorney from Kalispell, who represented the Montana Wildlife Federation on the study committee, stated that they recommended that the basic authority for air pollution control should be in a council or commission with a fairly large representative membership with representatives from governmental agencies serving in an advisory capacity, and the commission should determine the standards on an area basis. He also said it was their opinion that the State Board of Health should enforce the standards set by the council, and that enforcement should apply to everyone with no exceptions: there should be a flexible penalty; in cases of court review that new evidence should be allowed to be submitted to the court, without having to go back to the board for a rehearing.

Mr. Clyde A. Cromwell, Manager of the Farmer's Union Refinery at Laurel, spoke on behalf of industry's attitude toward air pollution, stating that industry is not opposed to good, solid air pollution legislation, and that it is allotting money for research to control air pollution. He said he was in favor of a good, strong, mixed commission of concerned people to set policy, with the Board of Health administering the Act.

Mr. Ray Countryman of the Waldorf-Hoerner Paper Company, Missoula, said that he felt his greatest concern in the area of control is that provision be made to adequately fund the program so that any law passed would be administered by well-qualified, technically competent and properly equipped people; and that HB 30 meets these requirements.

Mr. Conrad B. Fredricks, an attorney from Helena and a graduate chemist, compared some of the features of House Bill 30 and House Bill 8.

Following a question period, the meeting adjourned at 6:00 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

Comments of

John S. Anderson, M.D.
Executive Officer
Montana State Board of Health

at

House Committee Hearing on Air Pollution
January 19, 1967 - 4:00 P.M.

Rep. Forrest Crum, Chairman

A PROPOSED ACT FOR AIR POLLUTION CONTROL IN MONTANA
Prepared by the Montana Air Pollution Control Legislative Study Committee

Montana has yet to enact air pollution control legislation. Many bills pertaining to this subject have been introduced during the last three sessions of the legislature. Of these, only one has been enacted into law. This was Senate Bill 219 passed by the 1965 session which is now Chapter 39 of Title 69, R.C.M. 1947. It defines air pollution and establishes the State Board of Health as an air pollution research agency. It does not provide for any program to control air pollution.

Much emotionalism surrounds efforts to establish an air pollution program. The words "air pollution" by themselves evoke strong emotional feelings. On the one hand are the people who want no "pollution", whatever that means to them. On the other hand are the "polluters", who dislike playing the role of the villain and who fear that they will be penalized to an unwarranted extent. The short time the legislature is in session does not permit lengthy exploration of ideas and/or discussion. Persons, associations, agencies, corporations and groups are labeled either "pro" or "anti" air pollution control. Lines are drawn and the battle is fought to pass, kill, or amend each particular bill.

Much ill feeling and misunderstanding are engendered by this process.

It seems to be quite clear that the people of Montana desire to have some type of air pollution legislation. This is true of the groups who have carried the label of "anti-air pollution control" in the past. It is the quality and type of program that is controversial.

It is for the above reasons that Governor Tim Babcock requested the State Board of Health to appoint a committee that would study air pollution legislation and draft a proposed act that would be suitable for Montana.

The committee would be representative of a wide variety of interests. The following are the persons who accepted appointment to this committee:

[Anderson]

Name	Representation	Location
John S. Anderson, M.D.	State Board of Health	Helena
Harold Braun, M.D.	Physician	Missoula
Stanley Burger	Farm Bureau	Bozeman
Roy Countryman	Waldorf-Hoerner Paper Co.	Missoula
C. A. Cromwell	Farmer's Union Refinery	Laurel
H. R. Dix	Mayor, City of Missoula	Missoula
Mrs. M. Y. Foster	Individual	Missoula
John B. Hazen	Water Pollution Council	Butte
Arthur F. Hayes, D.V.M.	Veterinarian	Birney
Robert N. Helding	St. Regis Paper Co.	Libby
Wilford Johnson	Rancher	Hall
W. M. Kirkpatrick	The Anaconda Company	Butte
Kenneth J. Lampert, M.D.	Health Officer	Missoula
Gareth C. Moon	State Forester	Missoula
John Rice	Rice Truck Lines	Gt. Falls
Albert Root	A.F.L.-C.I.O.	Helena
Mr. Wayne Rusk	Elkhorn Lumber Co.	Missoula
Max Salazar	Mine-Mill-Smeltermen Union	Butte
R. C. Setterstrom	Montana Power Co.	Butte
Robt. Sykes	Montana Wildlife Federation	Kalispell
Dr. Raymond Suiter	Engineering Research Lab, MSU	Bozeman

In addition the following were considered "non-voting" members who contributed consultation to the committee:

Samuel Chapman	State Planning Board	Helena
Richard Dightman	Weather Bureau	Helena
Conrad Fredricks, Attny.	Individual	Helena

There were no funds available to this committee. The members attended meetings and worked at their own expense.

The Committee first met on August 24, 1965. It was quickly apparent that the members had a devoted interest in the subject; that they were willing to work; that they wanted to be effective; and that they respected the feelings of others who might have opinions different than their own.

Montana enjoys the national reputation of having a good water pollution program. If this is so, might not an air pollution program be modeled on the same basis? This was the expressed feeling of the Committee and the reason who the proposed act resembles the Water Pollution Act in many ways.

Because of the wide geographical distribution of the members, it was decided to divide them into an "Eastern" and a "Western" sub-committee for work purposes.

[Anderson]

The "Eastern" sub-committee under the chairmanship of Clyde Cromwell was to prepare a working draft of legislation along the lines suggested by the whole committee.

The "Western" sub-committee under the chairmanship of Robert Sykes, was to recommend goals, policies and definitions.

After several meetings of the whole committee, numerous sub-committee meetings, correspondence between members, comments from the United States Public Health Service and other outside individuals, the committee completed its draft. It was approved by the committee on February 10, 1966 and sent to the Montana Legislative Council for review concerning proper language and format.

The motion to approve the draft was "That this committee submit to the legislature the proposed Air Conservation Act, as amended today, as a bill on air pollution that would serve the interest of Montana."

The committee believes that there is much merit in considering this draft for introduction and passage at the next session of the Montana legislature. It believes that it would be endorsed by a wide range of persons, groups, and corporations. It does not believe that this is the only worthwhile approach to a practical, workable, fair and effective air pollution program. It is the one the committee chose and has the advantage of being thoroughly studied and discussed so that the members are familiar and feel secure in it.

Comments of

Benjamin F. Wake
Industrial Hygiene Engineer
Montana State Board of Health

at

House Committee Hearing on Air Pollution
January 19, 1967 - 4:00 P.M.

Rep. Forrest Crum, Chairman

Over the past several years, I have come to the conclusion that the technical procedures applied to air pollution control are less important and less difficult to find and apply than the deviation of and agreement upon policy statements which administer these procedures.

If this is true, then our best efforts should first be directed to achieving an agreement as to the existence and severity of the problem, and the objectives to be met in solving the problem. Lastly, the more definitive means can be considered.

The first fundamental principal to be accepted, if there is unity among those establishing the policy, is: That air is for breathing, or that the basic use of air is to sustain life, and that all other uses must yield to this requirement. Since the average adult must inhale approximately 400 cubic feet of air, daily, just to survive, the requirements for cleanliness of this life-sustaining resource is apparent.

Montana's air pollution problems are not vague and ill-defined ones that can more properly be handled at some indefinite time in the future. It exists now, and it will be worse tomorrow, unless a firm plan for a systematic and orderly program of abatement and prevention is instituted now. We don't know the answers to all the problems, but we do know the answer to many of the problems. Progress against the knowns can begin, immediately, for some procedures for control of known problems have been on the market for half a century.

Fundamental Elements of Any Air Pollution Control Program

Any air pollution control program must establish air quality objectives that describe a level of air quality designed to protect the people from the adverse effects of air pollution. They are intended, further, to promote maximum comfort and enjoyment in use of property consistent with economic and social well-being of the community. Since the primary use of air resource is to sustain life, the only areas of compromise are economic and aesthetic. In these areas, the cost to society for providing a given level of air quality must be balanced against the benefits obtained. As a consequence, in many communities, achievement of a desired air quality will be

realized through a number of transition periods - not necessarily long - during which improvements will be made as advancing technology reduces the cost of cleaner air.

The objectives established are to be used as a tool in achieving cleaner air and not as a license to permit unnecessary degradation of good air that already exists, and it does exist in many areas of the state.

Understanding of the effects of air pollution on the health and well-being of people and the technological measures for control are advancing; therefore, the objectives established at one period are not necessarily intended to represent the ultimate in air quality achievement. It should be anticipated that research and development will gradually make possible cleaner air at lower cost.

The degree of air purity required may depend upon the effect on all or any of the following receptors: man, livestock, vegetation, property and even useful insects such as bees. This is especially so, for example, with some of the pollutants such as fluorides which not only damage vegetation, but also may build up concentrations of forage crops, toxic to cattle.

When protection of health is concerned, the objectives must be set so as to assure no adverse effects. Otherwise, objectives may, in whole or in part, be based on potential effects on other susceptible receptors and accepted or potential land uses.

It does not, in my opinion, appear to be logical to attempt to set one overall set of air quality objectives to apply to the entire state except relative to health matters. It cannot be expected that the governing body should permit air in a clean area - for example one used primarily for high quality purposes such as recreation or homes - to be degraded to a level that can reasonably be attainable in a highly industrialized area. On the other hand, it would not be reasonable to expect a highly industrialized area, such as Anaconda, to attain the level of air quality prevailing in essentially clean areas where no indentifiable air pollution exists. This does not mean, however, that the community of Anaconda should not expect a substantial reduction of air pollutants which currently exist - particularly from a health standpoint.

The goals or objectives in any one classified area must not infringe upon the goals or objectives in any other classified area which may have a considerably cleaner environment that the one for which the goal was set.

Air pollution has been identified by the leading authorities in the country and throughout the world as a cause of discomfort, disease and even death. This statement does not identify any specific or single element or any group of elements in the air as the cause of this condition. It simply states that those who live in a community having polluted air will suffer more disease and will experience a larger number of deaths due to diseases traceable to air pollution than those people who live in an environment which is less polluted.

Problem Areas by Geography

Our studies, this far, beginning in early 1961 but as far back as 1955, indicate that the areas west of the Continental Divide will experience a greater problem from air pollution than will the areas east of the Continental Divide; however, studies conducted in the past in the seven cities of Anaconda, Billings, Butte, Great Falls, Helena, Libby, and Missoula would indicate that nearly all of these areas have some pollution existing or a substantial potential for the development of a serious problem. Further definitive studies have been made in the Deer Lodge Valley, including Garrison and Anaconda, and at East Helena, and are currently being carried on in the Billings area including Laurel, and in the Helena Valley.

Division of Effort

As a result of the studies made over various portions of the state to this date, and with the experience gained in performing these studies and dealing with various air pollution problems identified and measured in these areas, the problem areas appear to divide themselves into five distinct areas of effort which could be used. The attached table indicates the division of effort into the various areas. While the categories under the various divisions are only examples of the type of operations that could be approached, it is not intended to be all-inclusive or to indicate any priority of need, or which can be first approached, or which are the worst offenders.

DIVISION OF EFFORT

Municipal	Agriculture	Forest Products
Backyard Trash Burning: Ordinance & enforcement	Stockyards: Cleaning & control	Sawmill Boilers
Dusty Streets: Planning, parking	Open Fires	Teepee Burners
Burning Dumps: Planning & landfill	Field Stubble Burning	Open Burning
Leaf Burning	Dry Fields near Cities	Slash Burning
Large Store & Apartment House Incinerators		
Coal & Wood Boilers		

Industry	Automotive & Transportation
Asphalt Batching	Automobile - O.K.
Paper Mills	Railroad - right of way burning & trash
Metal & Chemical	Highway - right of way burning
Petroleum Refinery	Highway & Traffic Patterns
Packing & Slaughter	
Car Body Burning	
Coal Burning Steam Generators	

No special attempt will be made to keep effort or progress uniform or parallel in any division. Each division has certain categories that can be approached early with the expectation that controls will be applied immediately or very soon not withstanding other sources on adjacent property may produce more pollution. Certain categories in each division will require assistance of consultants and even research. Consultation and research may be financed wholly, partially, or not at all by the control agency. Each category having several members in its group will be encouraged and helped to help themselves. Effort means conference and conciliation, study and evaluation, development of standards, time schedules for compliance, progress reports, hearings, and court action, if necessary.

Sykes

EXPLANATION OF PROPOSED AIR POLLUTION - CONSERVATION BILL

An Advisory Committee to the State Board of Health has accepted a bill on air pollution and conservation that is being presented by the Committee to the next legislature for its consideration. The bill is one that resulted from several months of work and effort on the part of various members of the Advisory Committee. The Committee itself was composed of representatives of various businesses, organizations, and clubs from every walk of life. The basic framework of the proposed bill is as follows:

1. The creation of an Air Conservation Council composed of eleven members. The members: Director of State Board of Health, a licensed practicing physician, a licensed engineer, a representative of labor, representative of conservation, a licensed practicing veterinarian, representative of agriculture, representative of processing industry, representative of the fuel industry, and two members at large. REASON FOR CREATION OF COUNCIL AND MEMBERSHIP: That the Council having overall rule and regulatory power be as representative of the various segments of Montana's population and economy as possible. That the regulatory body be established to assure not only protection to health but to property and other values related to air conservation.

2. Administration of the act to be carried out by the Board of Health and its staff. REASON: The creation of a new division of an established agency is easier to establish, more acceptable to the legislature, and simplifies budgetary procedure.

3. Enforcement to be carried out by orders issued, supported by right to injunctions and misdemeanor fines and imprisonment. REASON: The use of injunctions, fines, and or imprisonment would be more flexible and a better administrative procedure.

4. The use of permits or variances, conditioned upon a person or company achieving abatement of an air pollution problem over a period of time that will be reasonable under the particular circumstances. In granting such variances the limitation would be a year, with the right to extend from year to year. It would be in the discretion of the Board subject to hearing. REASON: In many instances a particular problem will require considerable expenditures, research, and time. The Committee felt that where a substantial effort is being made, and the problem will be solved, that permitting continued operation be considered if under the circumstances, and in the Board's discretion, the granting of a permit or variance would be reasonable. This is a provision in most of the pollution laws of other states.

5. All parties would have recourse to the courts concerning any orders and other action of the administrative agency. Such recourse would be on a "de novo" basis. This means that it would be tried anew with right of appeal as in other cases, to the Supreme Court. REASON: The Committee felt that since appeal from administrative action in almost every other field in Montana is on a "de novo" basis, that such legislative historical history would recommend this same type of procedure be encorporated in the proposed bill.

6. The bill also provides for emergency injunctions, where it appears that the air pollution is endangering health. It would require a 24-hour notice together with the right of a continuing injunction, if the evidence warranted same.

WHY INDUSTRY FEELS THAT AIR POLLUTION CONTROL IS DESIRABLE

PREFACE: Lexoe A. Commerce.

Industry has the utmost stake in the field of Air Pollution abatement since exclusive of the automobile, homes and individuals. the main pollutants emanate from industrial facilities. One of the major sources of pollution is the power generating industry. Other sources are represented by the chemical and petroleum industry, steel operation, paper and wood products. Each industry independently is plagued with his own spectral pollution problem.

PETROLEUM INDUSTRY

This industry is currently spending gigantic sums in the field of air pollution abatement. This situation has prevailed for many years, but the tempo of expenditures has escalated to multiple expenditures compared with past history. The Petroleum Trades Association, API has alloted several million dollars at the

insistence of the petroleum industry as a whole to accelerate research in the field of air pollution abatement.

CONTAMINENTS

Anti-pollution measures are not neo-scheme. Industry has been coping with this problem particularly the Petroleum Industry ever since it's inception. It is well known that petroleum contains varying amounts of sulfur; coal is also similar in this respect. Nearly all refiners are removing these sulfur compounds from its gasoline, heating oils, and diesel oils. No simplified method has been devised as yet for the desulfrization of residual oils. These sulfur compounds are being converted to elemental sulfur or burned as fuel in the various refineries.

Contaminents vary widely with different industries. Numerous pollutants stem from the combustion of fossil fuels, mainly in the form of sulfur oxides and particulates. Smoke should no longer be a problem with modern day design of combustion facilities. There is widely considerable controversy over the use of the Ringleman Chart. There is an individual in the state who is carrying on an individual crusade for nominating this test method into every pollution law that is introduced. A great deal of emphasis is being placed on this method for monitoring degree of

pollution. The method is quite antiquated although extensively used. It depends strictly upon the operator, and there is some indication that water vapor may dark enough in color to violate either #1 or #2 Ringleman. I have several copies of this chart in which you may like to review.

As far as the refining industry is concerned, the major source of pollutants is now sulfur oxides. Small quantities of hydrocarbons still escape into the atmosphere in the main from loading transports and from small bulk plant tanks. Numerous refiners have in recent years installed waste heat boilers to convert carbon monoxide which formerly emitted into the atmosphere into useful heat and carbon dioxide. These oil companies are voluntarily installing pollution abatement facilities of all types on a voluntary basis. More installations are programmed as new

developments in this area becomes prevalent. Many of these installations are installed disregarding their economics.

AIR POLLUTION LEGISLATION

Industry as a whole welcomes a rational, orderly, pollution legislation based on sound scientific and legal principles. HB 8 and HB 30 represent many of these features. HB 8 is patterned after the joint model draft of the Council of State Governments and Health, Education and Welfare. HB 30 incorporated features of several bills. Each one of the two reference bills above has been modified to varying degrees to suit the draftees. Personally I have no objections to the salient features of HB 8; however, there are some phases that are detrimental to industry without subsequent equivalent benefits. Perhaps HB 30 lacks some of the potent features that some people would like to introduce. There are some undesirable features in its judicial section and no penalty provisions are provided. Actually HB 30 was drafted by people representing numerous industries and not by a single Attorney for Anaconda who has been accused as the author. He was exceedingly helpful in preparing the format of the bill by virtue of his legal bility.

CONCLUSION

There is no foundation for industry opposing air pollution legislation. Neither is there any basic or sound theory for failure and neglect to install abatement facilities as required based upon knowledge of the problem. One factor that the general public has failed to recognize and that is that whatever costs are incurred in manufacturing goods and commodities by industry, will be passed on to the public. In the main, I am sure that all of industry will be most cooperative in this field. Industry is endeavoring to place all of this gigantic research facilities in attempting to solve these problems. Industry is the so-called"culprit". They have the greatest stake in matters of pollution. They are in the best position to cope with this problem and develop and devise methods and systems for pollution abatement. I feel con-

fident that my philosophies are concurred in by nearly all of those industry leaders.

January 19, 1967

STATEMENT GIVEN BEFORE HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY.

Mr. Chairman and Gentlemen of the Committee:

My name is Roy Countryman. I am Vice-President of Hoerner Waldorf Corporation of Montana, and Resident Manager of the pulp and paper mill located near Missoula. By profession, I am a chemical engineer. Prior to joining the Hoerner Waldorf Corp. in 1957, I was employed by the pulp division of the Weyerhaeuser Co. in the State of Washington.

About two years ago, I was invited by Dr. John Anderson to join a diverse group of people representing a broad cross-section of citizens, to draft a proposed air pollution control law. I speak to you today in the role of a representative of the Legislative Study Committee of theBoard of Health.

I have been asked to comment on the financial aspects of proposed legislation. A figure given at the National Air Pollution Conference held in Washington D.C. about a month ago, indicated that 40¢ to 50¢ per capita per year is required to adequately finance an air pollution control program. This points up the basic weakness/of local control and inherent inadequacy. A competent technical staff, properly equipped, simply cannot be provided on a local level in a sparsely populated state like Montana. I speak most sincerely when I say the greatest concern I have in the area of control, is that whatever we do, we must be sure that provision is made to adquately fund the program, so we can be assured that regardless of the law that is enacted it is administered by well qualified, technically competent, properly equipped, people. HB 30 meets these requirements.

Somewhat aside from the area of financing, but certainly in keeping with my foregoing statement on technical competence, I invite your comparison of HB8 and HB30 in regard to the makeup of the governing bodies. HB8 leaves the door open to political maneuvering regarding the commission makeup. Technical competence sits in the wings in the form of an advisory board that MAY do this or MAY do that. In HB30, the power of the law is vested with technically competent people outside the political arena and this, I submit, is the way it should be.

January 25, 1967

PUBLIC HEALTH, WELFARE & SAFETY SUBCOMMITTEE MINUTES

A subcommittee of the Public Health, Welfare & Safety Committee met in Room 119, Wednesday, January 25th, at 8:25 p.m., for the purpose of working on air pollution bills. Subcommittee members present were McCulloch, Prevost, Cox, Marbut, Healy, and Delano. Mr. Crum presided. Also present were Mr. Kenneth Neill and William Mufich, attorneys from the Legislative Council.

Mr. Cox moved that the subcommittee begin its deliberations with a section by section study and analysis of House Bill 8. Motion was seconded and carried.

Mr. Prevost moved that the act be called "The Clean Air Act of Montana"; motion was seconded and carried.

The committee then went through the three bills (HB 8, 30 and 496) section by section, specifying the changes wanted, and requested the attorneys to draw up a modified bill in draft form, with the changes indicated.

The meeting adjourned at 11:10 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

January 26, 1967

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

The Public Health, Welfare & Safety Committee met in Room 119 at 3:30 p.m., Thursday, January 26, 1967. All committee members were present with the exception of Patrick and Ainsworth (Ainsworth excused); Chairman Crum presided.

The Chairman reported briefly on the progress of the subcommittee working on House Bills 8, 30 and 496.

Representative E. W. Christiansen, principal sponsor, spoke on behalf of House Bill 358. Mr. Crowell Shelton, Administrator of the State Liquor Control Board, was present to answer questions in regard to the bill. Witnesses were excused.

Mr. W. J. Fouse, Administrator of the State Department of Welfare, answered committee questions in regard to House Bill 79.

In reference to HB 24, Mr. Ward A. Shanahan, attorney for the Montana Railroad Association, set out various sections of the bill that his association felt needed clarifying. Mr. Robert D. Corette, representing the Montana Power Company, also discussed sections of the bill that his company wished to see omitted or clarified. Dr. John S. Anderson, Executive Officer of the State Board of Health, reported to the committee on various errors in the bill that should be corrected.

Chairman Crum appointed a subcommittee to meet with those recommending changes in HB 24 to bring back a report to the full committee. Himsl, White and Hall were named as the subcommittee members, with Himsl to serve as chairman. Witnesses were excused.

Mr. Hall moved that the same amendment be added to House Bill 79 that was added to HB 13, following the underlined portion of the original bill, and that HB 79 be reported out as "As amended, Do Pass". The amendment reads as follows: "Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the State Department of Public Welfare, running in favor of the child or children and the State of Montana, conditioned upon the faithful use by such other person of the said funds for the welfare of the said child or children. Such bond shall be in an amount equal to six times the amount of the monthly payment involved." The motion was seconded and passed.

House Bill 358. Mr. Marbut moved that HB 358 be reported out as "Do Not Pass." Mr. Hall made a substitute motion that consideration be deferred on the bill until mimeographed copies of the bill are in the hands of the committee. Substitute motion was seconded and carried.

The meeting adjourned at 4:30 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

January 27, 1967

PUBLIC HEALTH, WELFARE & SAFETY SUBCOMMITTEE MINUTES

A subcommittee of the Public Health, Welfare & Safety Committee met in Room 119, at 8:15 p.m., Friday, January 27, 1967, to do further work on House Bill 8. Members present were Marbut, Healy, Ainsworth, Prevost, McCulloch, and Delano, with Mr. Crum presiding.

Following considerable discussion, it was agreed to postpone reporting out on the bill to the full committee in order to allow for further consultation with reference to the option of local control of air pollution.

The meeting adjourned at 10:10 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

January 29, 1967

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

The Public Health, Welfare & Safety Committee met in Room 119, on Sunday, January 29, 1967, at 3:30. All members were present; Chairman Crum presided.

Mr. Ainsworth moved to amend Section 6, subsection (2), of House Bill 8 by adding: "transcripts of which will be available to the public at cost." Motion was seconded and carried.

Chairman Crum explained the entire bill to the full committee. Mr. Ainsworth moved that House Bill 8 "Do Pass As Amended". A substitute motion was made by Mr. Healy to defer a decision on the bill until the regular committee meeting on Tuesday. The substitute motion failed by a 6 to 9 vote, at which time the main motion by Mr.Ainsworth passed, 9 to 6.

The meeting adjourned at 4:35 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

February 9, 1967

A meeting of the Finance and Claims Committee was called to order by Chairman Groff on Thursday, February 9 at 8:00 A. M. in Room 331.

All members were present.

House Bill No. 8 was taken under consideration. This is an act providing for the conservation of the air resources of the state providing for prevention, abatement, and control of air pollution. After a brief discussion, a motion was made to omit Section 22 of the original bill in its entirety and number Section 23 to Section 22. The motion was seconded and carried.

House Bill No. 245 was the next bill to be discussed. Representative Loman, Dr. Anderson from the State Board of Health and Mr. Frank Wake were present to speak for this bill. This bill is an act to institute and maintain in the Board of Health a regulatory program for sources of ionizing radiation. Mr. Wake read a statement by Dr. Anderson. (See Exhibit "A"). Dr. Anderson said this bill was drawn up by request of the Atomic Energy Commission and that 23 states have control of x-ray and radiation. In answer to a question, Dr. Anderson said his department had several meetings with radiologists and had letters from Sam Chapman of the State Planning Board desiring this piece of legislation. He said the Medical Association had not taken any stand on this but would have if they had known that a bill was going to be introduced. He said this was a uniform type bill and that there are plants using radiation in Montana at this time. According to Dr. Anderson there would be personnel available to staff this kind of position. After further discussion, Loman, Anderson and Wake were excused.

Mr. Alex Stephenson was present to explain House Bill No. 239. This is an act relating to qualifications, salary, probationary training and tenure of office of highway patrolmen. Mr. Stephenson distributed information on this bill. (See Exhibit "B"). Mr. Stephenson was excused.

A motion was made to amend House Bill 239 by omitting the words "for all patrolmen" and inserting in lieu thereof the words "which shall be uniform within all grades". The motion was seconded and carried. A motion was made to amend House Bill 239 further by omitting "not over 55% of the patrol shall belong to one political party". The motion was seconded and carried.

A motion was made that House Bill 239 be concurred in as amended. The motion was seconded and carried.

Chairman Groff then appointed a committee consisting of McOmber and Moritz to further study House Bill 245 and to contact the medical profession, lobbyists and the industry people to get their viewpoint of the bill.

The meeting was adjourned.

Groff

MINUTES
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
STATE SENATE

February 22, 1967

The meeting of the Public Health, Welfare and Safety Committee was held in room 440, Wednesday, February 22, 1967, on adjournment. The meeting was called to order by the chairman and roll call was taken. A quorum was present.

HOUSE BILL 412 was the first bill that the Committee considered. Mr. Walter Bolkovatz, a practicing attorney and registered lobbiest was the first proponent for the bill. Stated that this was an act providing for the registration and licensing of a masseur and masseuse. Provides for examination and licensing. Purpose is that a masseur and masseuse should be regulated and licensed for the protection of the interest, health and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board of properly protect the patron public against improper unauthorized and unqualified masseurs and masseuse and to provide standards of sanitation and practice.

House Representatives Forrest Crum and John Healy, sponsors of the bill were very much in favor of the bill. Stated that this will not cost the state of Montana anything as they have their own fund. Other proponents for the bill who did not comment of the bill were Mr. and Mrs. Saunders, Klint Carrington, and Florence Dutton.

The bill was then acted upon. An amendment was brought up by Senator Hibbard dealing with the disposition of a special fund. He motioned that the bill be taken to the Legislative Council for amendment. The bill was then moved to be concurred as amended. Motion made by Senator Hilling and seconded by Senator Hibbard.

HOUSE BILL 219 which at the previous committee meeting had been placed into a sub committee was now considered. Senator Rasmussen gave the amendment that was drawn up by the subcommittee. He took the bill over to Judiciary and there was no objection. He then moved that the amendments be concurred in and the motion was seconded by Senator Swanz. The bill was then moved to be concurred in as amended. Motion was made by Senator Rasmussen and seconded by Senator Deschamps.

HOUSE BILL 8 was then given to the committee for their consideration. Senator Flynn read the amendments to this bill. This bill deals with the air pollution in Montana. The amendments were then motioned to be concurred in by Senator Deschamps and Senator Rasmussen. A roll call vote was taken on the amendments. The only two Senators that were no are Senator Swanz and Senator Hibbard.

January 28, 1967

PUBLIC HEALTH, WELFARE & SAFETY SUBCOMMITTEE MINUTES

A subcommittee on air pollution of the Public Health, Welfare & Safety Committee met in Room 119 at 4:40 p.m., Saturday, January 28, 1967. Subcommittee members present were Prevost, Marbut, Delano, McCulloch, Fischer, Cox, and Healy, with Chairman Crum presiding.

Following discussion, Mr. Marbut moved that the subcommittee approve House Bill 8 as amended. Mr. Healy made a substitute motion that the bill be held for further study over the weekend. The substitute motion failed; with the main motion then passing.

Meeting adjourned at 5:20 p.m.

Forrest H. Crum

FORREST H. CRUM, Chairman

CHAPTER 313

An Act Providing for the Conservation of the Air Resources of the State; Providing for Prevention, Abatement, and Control of Air Pollution; Providing Penalties for Violation; and Repealing Sections 69-3901, 69-3902, and 69-3903, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

"Clean Air Act of Montana."

Section 1. **Short title.** This act shall be known and may be cited as the "Clean Air Act of Montana."

Policy and purpose.

Section 2. **Declaration of policy and purpose.** (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this act to provide for a coordinated statewide program of air pollution prevention, abatement and control; for an appropriate distribution of responsibilities among the state and local units of government; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Definitions.

Section 3. **Definitions.** As used in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

"Air contaminant."

"Air pollution."

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or conduct of business.

"Emission."

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

"Person."

(4) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

"Advisory council."

(5) "Advisory council" means the air pollution control advisory council created by this act.

"Director."

(6) "Director" means the director of air pollution control, a position created by this act.

"Board."

(7) "Board" means the state board of health.

Administration—state board of health.

Section 4. **Administration—state board of health.** The state board of health shall have responsibility for the administration of this act and shall appoint a director of air pollution control to assist the board in its administration hereunder.

(1) The director shall be a person with at least two (2) years' experience or training in the field of air pollution control, experienced in administrative work and procedures, and he must be a graduate in engineering, medicine, or in physical, chemical or biological sciences.

(2) The salary of the director will be set and paid by the board.

(3) The powers and duties of the director shall be established and prescribed by the board in its rules, regulations and standards.

(4) The director may delegate to any employee of the board such duties and functions as he deems necessary for the proper and efficient administration of this act, and the director shall have authority, with the approval of the board, to hire additional employees and to discharge same for cause.

Air pollution control advisory council—members—term—compensation—meetings—secretary—rules and regulations.

Section 5. (1) There is hereby created an air pollution control advisory council. The advisory council shall consist of eleven (11) members as follows:

The executive officer of the state board of health; and ten (10) members to be appointed by the governor as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing

physician licensed in Montana; a practicing veterinarian licensed in Montana; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant. The chairman shall be elected by the advisory council from among this number.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that of the initially appointed members, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, three (3) shall serve for three (3) years and three (3) shall serve for four (4) years as designated by the governor at the time of making the appointment.

(3) No additional compensation shall be allowed any members of the advisory council for services rendered who are employed by the state government. The ten (10) members appointed by the governor to serve on the advisory council shall each be paid, in addition to actual travel expenses, twenty-five dollars ($25) per day for each day of actual services in the performance of their duties, and all members of the advisory council shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. All expenses of members who are otherwise in the employ of the state government shall be paid from the appropriation to their respective agencies. The expenses and per diem of the members who are appointed by the governor shall be paid from funds made available to the state board of health.

(4) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for all meetings shall be given in advance to each member of the advisory council by the secretary. A majority of the members of the advisory council shall constitute a quorum.

(5) The secretary of the advisory council shall be a member of the staff of the state board of health, designated by the executive officer of the board. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory council, not inconsistent with rules, regulations, and policies adopted by authority of this act or specific authority otherwise given the advisory council.

(6) The advisory council may consider standards, rules, and regulations as provided in section 10 of this act and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act.

Section 6. **Powers of board.** In addition to any other powers conferred on it by law the board shall: Powers of board.

(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct of the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions.

(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state.

(7) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act.

(8) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis, and to provide technical and consultative assistance therefor. If local programs are financed with public funds, the board may contract with the local government to share the cost of the program. However, the state share may not exceed thirty percent (30%) of the total cost.

(9) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, preventions, abatement, and control.

(10) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(11) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(12) Establish ambient air quality standards for the state as a whole within ninety (90) days of passage and approval of this act.

(13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(14) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups.

(15) Consult, upon request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules in force pursuant thereto, and any other provision of law.

(16) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board.

Classification and reporting.

Section 7. **Classification and reporting.** (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property, and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

Permits.

Section 8. **Permits.** (1) The board may, by rule or regulations, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application there-

for, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been granted.

Inspections.

Section 9. **Inspections.** (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Emissions prohibited.

Section 10. **Emissions prohibited.** (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population, or where the nature of the economy of or land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule or regulation.

Enforcement.

Section 11. **Enforcement.** (1) Whenever the board has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date the notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such request, the board shall hold a hearing.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as it may deem appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in the notice, and answer the charges complained of; or

(b) Initiate action pursuant to section 18 of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

Emergency procedure.

Section 12. **Emergency procedure.** (1) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

(2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provision of section 11 of this act. In such event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section shall apply.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

Variances.

Section 13. **Variances.** (1) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the rules or regulations from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 14 of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 of this act to any person or his property.

Hearings and judicial review.

Section 14. **Hearings and judicial review.** (1) No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory council has been afforded not less than

thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 12 of this act.

(3) Any person aggrieved by any order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) The board or local control authority acted without or in excess of its powers;

(b) The order was procured by fraud;

(c) The order is contrary to the evidence;

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing;

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made errors of law prejudicial to the appellant.

(5) Either the board of the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

Confidentiality of records.

Section 15. **Confidentiality of records.** (1) Any records or other information concerning air contaminant sources which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

Local air pollution control programs.

Section 16. **Local air pollution control programs.** (1) Any municipality or county may establish a local air pollution control program upon being petitioned by fifteen percent (15%) of the qualified electors within its jurisdiction, and may thereafter administer within its jurisdiction said air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 10, 12 and 13 of this act and rules issued thereunder;

(b) Provides for the enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program;

(d) Provided that such program shall be consistent with the intent and purposes of this act and is approved by the board after a public hearing conducted according to the provisions of section 6 of this act.

(2) If the board finds that the location, character, or extent of particular concentrations of population, or air contaminant sources, or geographic, topographic, or meteorological considerations, or any combinations of any of the foregoing, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(3) (a) If the board has reason to believe that an air pollution control program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that the program is being administered in a manner inconsistent with the requirements of this act, the board shall, on due notice, conduct a hearing on the matter.

(b) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(c) If the jurisdiction fails to take such measures within the time required, the board shall administer within such jurisdiction all of the provisions of this act. The board's control program shall supersede all municipal or county air pollution laws, regulations, ordinances, and requirements in the affected jurisdiction. The cost of such a program shall be a charge on the municipality or county.

(4) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may assume and retain control over that class of air contaminant source. No charge shall be assessed against the jurisdiction therefor. Findings made pursuant to this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any jurisdiction in which the board administers its air pollution control program pursuant to subsection (3) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(6) Any municipality or county may administer all or part of its air pollution control program in cooperation with one (1) or more municipalities or counties of this state or of other states.

(7) Nothing in this act shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on the effective date of this act, provided that within two (2) years from such date any such program meets all requirements of this act for a local air pollution control program.

State and federal aid.

Section 17. **State and federal aid.** (1) Any local air pollution control program meeting the requirements of this act and rules made pursuant thereto shall be eligible for state aid in an amount equal to thirty percent (30%) of the locally funded annual operating cost thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

Violation and penalties.

Section 18. **Penalties.** (1) Any person who violates any provision of this act, or any rule in force thereunder or any order made pursuant thereto, other than section 15, shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars ($1,000). Each day of violation shall constitute a separate offense.

(2) Any person who willfully violates section 15 of this act shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars ($1,000).

(3) Action pursuant to subsections (1) or (2) of this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings.

(4) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor.

(5) All fines collected shall be deposited to the state general fund.

Limitations.

Section 19. **Limitations.** Nothing in this act shall be construed to:

(1) Grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops.

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution.

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

Classification of property for taxation.

Section 20. **Classification of property for taxation.**

(1) Facilities, machinery or equipment, attached or unattached to real property, utilized to reduce, eliminate, control or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under the provisions of section 84-301.

(2) The decision, whether the facilities, machinery or equipment are utilized to reduce, eliminate, control or prevent air pollution, shall be made by the director and approved by the state board of equalization.

Severability clause.

Section 21. **Severability.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Repealing clause.

Section 22. Sections 69-3901, 69-3902, and 69-3903, R.C.M. 1947, are hereby repealed.

Approved: March 3, 1967.

CHAPTER 314

An Act to Create a Division of Wheat and Marketing Research in the Montana Department of Agriculture to Conduct Research Into All Phases of Wheat Culture, Production, Marketing and Use; Levying an Assessment of Two and One-Half (2½) Mills Per Bushel of Wheat on the Grower to Cover the Expense of Research and the Administration of This Act; Providing for an Effective Date, August 20, 1967.

Be it enacted by the Legislative Assembly of the State of Montana:

Montana Wheat Research and Marketing Act.

Section 1. This act may be cited as the Montana Wheat Research and Marketing Act.

Declaration of policy.

Section 2. **Declaration of policy.** In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat culture and production, marketing and use and into the development of markets for wheat grown